



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

JAN 14 2014

CERTIFIED MAIL 7010 1060 0002 1704 8944  
RETURN RECEIPT REQUESTED

C. J. Ellsworth  
MSD Energy, Inc.  
P. O. Box 33907  
Indialantic, Florida 32903

Re: Consent Agreement and Final Order (CA/FO)  
Docket No. SDWA-04-2014-1000(b)

Dear Mr. Ellsworth:

Enclosed is a copy of the Consent Agreement and Final Order (CA/FO) in this matter that has been filed with the Regional Hearing Clerk and served on the parties as required by 40 C.F.R. §22.6. This CA/FO was effective upon the date filed with the Regional Hearing Clerk and you are hereby ordered to comply immediately with the terms of the subject Order.

Thank you for your cooperation in settling this matter. Should you have any questions or concerns, please contact Ms. Carol Chen, Underground Injection Control Enforcement at (404) 562-9415.

Sincerely,

A handwritten signature in black ink, appearing to read "James D. Giattina".

James D. Giattina  
Director  
Water Protection Division

Enclosure

cc: Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

HEARING CLERK

2014 JAN 14 PM 1:56

RECEIVED  
EPA REGION IV

IN THE MATTER OF

MSD Energy, Inc.  
P. O. Box 33907  
Indialantic, Florida 32903

Respondent

Consent Agreement and Final Order

Docket No. SDWA-04-2014-1000(b)

STATUTORY AUTHORITY

1. Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules of Practice or Part 22), specifically Subpart I, published at 64 Fed. Reg. 40138 (July 23, 1999) and the delegated authority of the Administrator of the U.S. Environmental Protection Agency (EPA or Complainant) under Section 1423 of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h-2, the EPA, as Complainant, hereby enters into the following Consent Agreement and Final Order (CA/FO) with MSD Energy, Inc. (Respondent).
2. Section 1450(a)(1) of the SDWA, 42 U.S.C. § 300j-9(a)(1), authorizes the Administrator to prescribe such regulations as are necessary or appropriate to carry out her functions under the SDWA. These regulations are found at 40 C.F.R. Parts 124, 144, 146, 147, and 148, and set forth requirements for the Underground Injection Control (UIC) program promulgated under Part C of the SDWA, 42 U.S.C. § 300h, *et seq.*
3. Injection well owners and operators are required to comply with the UIC program requirements. The UIC program for the Commonwealth of Kentucky, including all Indian lands, is administered by the EPA. *See* 40 C.F.R. § 147.901(a).

ALLEGATIONS

4. Respondent is a corporation organized under the laws of Kentucky and doing business in the Commonwealth of Kentucky, with a business address of P. O. Box 33907, Indialantic, Florida 32903.
5. Respondent is the owner and/or operator of the Class II underground injection well that is subject to this Order (Subject Well). The Subject Well is a "facility" as that term is defined in 40 C.F.R. § 144.3.
6. The following Subject Well is permitted in accordance with 40 CFR § 144.31 and is subject to the requirements of the SDWA and the UIC regulations.

<u>Permit No.</u>	<u>EPA ID No.</u>	<u>Well</u>	<u>Status</u>	<u>County</u>
KYI0815	KYS0330001	S. D. Watson #1	Active	Caldwell

7. The SDWA, 42 U.S.C. § 300f, et seq. and 40 C.F.R. § 144.51(a) require the permittee, of a permitted UIC well, to comply with all conditions of the permit.

8. Part II, Section G, Paragraph 3, of the UIC permit, requires that a demonstration of mechanical integrity in accordance with 40 C.F.R. § 146.8 be made no later than 5 years from the last approved demonstration.

9. The mechanical integrity demonstration for the following active permitted Subject Well was overdue, as shown below.

<u>Permit No.</u>	<u>EPA ID No.</u>	<u>Well</u>	<u>Status</u>	<u>Last MIT</u>	<u>MIT Due</u>	<u>MIT Done</u>
KYI0815	KYS0330001	S. D. Watson #1	Active	04/27/07	04/27/12	09/03/13

10. Therefore, the Respondent is in violation of 40 C.F.R. § 146.8, the UIC permit and the SDWA for failure to timely demonstrate the mechanical integrity of the active permitted Subject Well, as shown above.

11. On September 24, 2013, Respondent participated in a show cause hearing with representatives of the EPA to discuss the violation of the SDWA and the implementing regulations.

#### STIPULATIONS AND FINDINGS

12. Respondent admits the jurisdictional allegations and facts and findings of violations as alleged herein. Respondent waives any right to a hearing and waives any right to appeal a final order in this matter, and consents to the issuance of a final order without further adjudication.

13. Complainant and Respondent have conferred for the purpose of settlement, pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the violations described herein without resorting to a formal hearing. Therefore, without the taking of any evidence or testimony, the making of an argument or the adjudication of any issue in this matter and in accordance with 40 C.F.R. § 22.13(b), this CA/FO will simultaneously commence and conclude this matter.

#### PENALTY

Based upon the foregoing findings, the parties hereby agree and consent to entry of the following Order:

14. Respondent shall pay a civil penalty of **\$3,000.00 (three thousand dollars)** in accordance with the terms set forth below.

15. Within 60 days of receipt of a fully-executed copy of this CA/FO, Respondent shall submit a cashier's or certified check in the amount of **\$3,000.00 (three thousand dollars)**. The penalty payment as set forth shall be made payable to the Treasurer, United States of America at the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Respondent shall note the title and docket number of the case on the penalty payment certified or cashiers check.

16. Respondent shall submit copies of the check to the following persons:

Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303-8960

Fred McManus, Chief  
Ground Water and UIC Section  
U.S. EPA - Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303-8960

17. Pursuant to Section 1423(2)(c)(7) of the SDWA, 42 U.S.C. § 300h-2(c)(7), failure by Respondent to pay the penalty assessed by this CA/FO in full by its due date may subject Respondent to a civil action in an appropriate district court to recover the amount assessed (plus costs, attorneys fees, and interest at currently prevailing rates from the date the order is effective). In such an action, the validity, amount and appropriateness of the penalty shall not be subject to review. Additionally, pursuant to 40 C.F.R. Part 13 and 31 U.S.C. § 3717 *et seq.*, if the EPA does not receive payment of the penalty assessed by this CA/FO in full by its due date, interest shall accrue on the unpaid balance from the due date through date of payment at an annual rate equal to the rate of the current value of funds to the United States Treasury as prescribed and published by the Secretary of the Treasury. If all or part of the payment is overdue, the EPA shall assess an administrative fee of \$15 for each subsequent 30 day period. The EPA shall assess, on a monthly basis, a 6% per annum penalty on any principal amount not paid within 90 days of the due date.

18. The names, addresses and telephone numbers of the individuals authorized to receive service relating to the proceeding are listed below.

For Respondent:

C. J. Ellsworth  
MSD Energy, Inc.  
P. O. Box 33907  
Indianapolis, Florida 32903  
321-505-9679

For the EPA:

Wilda Cobb, Associate Regional Counsel  
U.S. EPA - Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303-8960  
404-562-9530

**GENERAL PROVISIONS**

19. The provisions of this CA/FO shall be binding upon Respondent and its officers, directors, agents, servants, employees and successors or assigns. Notice of this CA/FO shall be given to any successors in interest prior to transfer of the ownership or operational control of the facility.

20. This CA/FO does not constitute a waiver, suspension or modification of the requirements of Part C of the SDWA, 42 U.S.C. § 300h, et seq. or any regulations promulgated there under. This CA/FO is not and shall not be interpreted to be, a permit for the injection of fluids under Section 1421 of the SDWA, 42 U.S.C. § 300h, nor shall it in any way relieve Respondent of any obligation imposed by any permit issued there under, or of Respondent's obligation to comply with any provision of the SDWA, its implementing regulations, or any other local, state or federal law. Payment of the penalty agreed to in this CA/FO shall not in any way affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any other violations of law. Full payment of the penalty and performance of the injunctive relief agreed to in this CA/FO resolves only Respondents liability for federal civil penalties for the violations and facts stipulated herein.

21. For the purposes of state and federal income taxation, Respondent shall not be entitled to and agrees not to attempt to claim a deduction for any penalty payment made pursuant to this CA/FO. Any attempt to deduct any such penalty shall constitute a violation of this CA/FO.

22. The parties acknowledge and agree that final approval by the EPA of this CA/FO is subject to 40 C.F.R. § 22.45(c)(4) which sets forth requirements under which a person not a party to this proceeding may petition to set aside a consent agreement and final order on the basis that material evidence was not considered.


23. Each party shall bear its own costs and attorneys fees in connection with this action.

24. This CA/FO shall become effective upon the date that it is filed with the Regional Hearing Clerk.

25. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and to execute and legally bind the Party he or she represents to this Agreement.

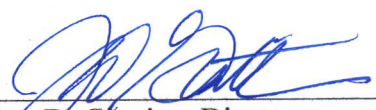
**RESPONDENT**

Date 10/30/13

  
\_\_\_\_\_  
C. J. Ellsworth  
MSD Energy, Inc.

**COMPLAINANT**

Date 1/8/14

  
James D. Giattina, Director  
Water Protection Division